



1995 SENATE BILL 584

February 28, 1996 - Introduced by Senator CLAUSING, cosponsored by Representative HARSDORF. Referred to Committee on Judiciary.

- 1 **AN ACT** *to amend* 946.82 (4); and *to create* 944.205 of the statutes; **relating to:**
2 possession and distribution of certain photographs, motion pictures, videotapes
3 or other visual representations showing nudity and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits sexual exploitation of a child, which includes: 1) having a child engage in sexually explicit conduct for the purpose of photographing or otherwise recording the conduct; 2) photographing or otherwise recording a child engaged in sexually explicit conduct; and 3) producing, distributing or otherwise promoting material showing a child engaged in sexually explicit conduct. A person convicted of sexual exploitation of a child may be fined not more than \$10,000 or imprisoned for not more than 10 years or both. In addition, under current law a person who possesses child pornography (material showing a child engaged in sexually explicit conduct) may be fined not more than \$10,000 or imprisoned for not more than 2 years or both.

This bill prohibits a person from taking a photograph or making a motion picture, videotape or other visual representation or reproduction that depicts nudity, if the photograph, motion picture, videotape or other visual representation or reproduction is taken or made without the knowledge and consent of the person who is depicted nude and if the person taking or making the photograph, motion picture, videotape or other visual representation or reproduction knows or has reason to know of the lack of knowledge and consent of the person depicted nude. The bill also prohibits a person from possessing or distributing a photograph, motion picture, videotape or other visual representation or reproduction that depicts nudity and that the person knows or has reason to know was taken or made without the knowledge and consent of the person who is depicted nude. A person who violates the prohibitions created by the bill may be fined not more than \$10,000 or imprisoned for not more than 2 years or both.

The bill also provides that a parent, guardian or legal custodian may make and possess a photograph, motion picture, videotape or other visual representation or reproduction that depicts his or her child nude if the photograph, motion picture, videotape or other visual representation or reproduction does not involve the child engaging in sexually explicit conduct. A parent may also distribute such a photograph, motion picture, videotape or other visual representation or reproduction if the distribution is not for commercial purposes.

Finally, the bill provides that the prohibitions created in the bill do not apply to any of the following: 1) a law enforcement officer acting within the scope of his or her employment; 2) any person who is obtaining or reviewing evidence for a criminal investigation or a pending civil action; 3) a medical professional acting within the scope of his or her employment; or 4) a person who receives a photograph, motion picture, videotape or other visual representation or reproduction of a child from the child's parent, guardian or legal custodian, if the distribution to and possession by the person is not for commercial purposes.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 944.205 of the statutes is created to read:

2 **944.205 Photographs, motion pictures, videotapes or other visual**
3 **representations showing nudity. (1)** In this section, "nudity" has the meaning
4 given in s. 948.11 (1) (d).

5 **(2)** Whoever does any of the following is guilty of a Class E felony:

6 (a) Takes a photograph or makes a motion picture, videotape or other visual
7 representation or reproduction that depicts nudity without the knowledge and
8 consent of the person who is depicted nude, if the person knows or has reason to know
9 that the person who is depicted nude does not know of and consent to the taking or
10 making of the photograph, motion picture, videotape or other visual representation
11 or reproduction.

12 (b) Possesses or distributes a photograph, motion picture, videotape or other
13 visual representation or reproduction that depicts nudity and that was taken or
14 made without the knowledge and consent of the person who is depicted nude, if the

1 person knows or has reason to know that the photograph, motion picture, videotape
2 or other visual representation or reproduction was taken or made without the
3 knowledge and consent of the person who is depicted nude.

4 **(3)** Notwithstanding sub. (2) (a) and (b), if the person in a photograph, motion
5 picture, videotape or other visual representation or reproduction is a minor and the
6 making, possession or distribution of the photograph, motion picture, videotape or
7 other visual representation or reproduction does not violate s. 948.05 or 948.12, a
8 parent, guardian or legal custodian may do any of the following:

9 (a) Make and possess the photograph, motion picture, videotape or other visual
10 representation or reproduction of the child.

11 (b) Distribute a photograph, motion picture, videotape or other visual
12 representation or reproduction made or possessed under par. (a) if the distribution
13 is not for commercial purposes.

14 **(4)** This section does not apply to any book, pamphlet, magazine, printed
15 matter, photograph, motion picture, videotape or other visual representation or
16 reproduction possessed or distributed by any of the following:

17 (a) A law enforcement officer acting within the scope of his or her employment.

18 (b) Any person who is obtaining or reviewing evidence for a criminal
19 investigation or a pending civil action.

20 (c) A medical professional acting within the scope of his or her employment.

21 (d) A person who receives a photograph, motion picture, videotape or other
22 visual representation or reproduction of a minor from a parent, guardian or legal
23 custodian under sub. (3) (b), if the possession and distribution are not for commercial
24 purposes.

